IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. Civil Regular First Appeal No.18/1999

Ajmer Vidhyut Vitran Nigam Limited
Vidyut Bhawan Vidyut Marg, Jaipur
& Others
...defendants-appellants
Versus
Shri Ram Dev S/o late Shri Hajari Gurjar
...plaintiff-respondent

2. S.B. Civil Regular First Appeal No.19/1999

Ajmer Vidhyut Vitran Nigam Limited
Vidyut Bhawan Vidyut Marg, Jaipur
& Others
...defendants-appellants
Versus
Shri Ram Dev S/o late Shri Hajari Gurjar
...plaintiff-respondent

3. S.B. Civil Regular First Appeal No.157/2002

Ram Dev S/o late Shri Hazari Gurjar
...plaintiff-appellant
Versus
Ajmer Vidyut Vitran Nigam Limited
Vidyut Bhawan, Jyoti Nagar, Jaipur
& Others
...defendants-respondents

Date of Judgment ::: 11th July, 2007

PRESENT
HON'BLE MR. JUSTICE N.K. JAIN

Presence in Appeals No.18/99 and 19/99

Shri Alok Garg, Counsel for defendant-appellants
None present for plaintiff-respondent

Presence in Appeal No.157/2002

None present for plaintiff-appellant

Shri Alok Garg, Counsel for defendant-respondents

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By the Court:-

These three appeals are directed against common judgment dated 12.10.1998 passed by Additional District Judge No.7, Jaipur City, Jaipur, in Civil Suits No.72/1996 and 73/1996, arising out of accident occurred on 15.6.1996, therefore, all these appeals are being decided by this common judgment.

Plaintiff Ram Dev filed two separate civil suits in the trial court for award of compensation in respect of death of his deceased father Hazari and mother Rukmani, died on account of electric current flowing in electric pole stay-wire. It was pleaded that the occurrence took place because of negligence on the part of the defendants. The plaintiff claimed compensation of Rs.3,58,000/- in respect of death of his mother and Rs.4,92,000/- in respect of death of his father.

The defendants denied the contents of the suits and contended that there was no negligence on the part of the defendants as, after completion of investigation in First Information Report lodged by the plaintiff, a charge-sheet was filed against one Ram Kishan under Section 304A of the Indian Penal Code, therefore, the suits are liable to be dismissed against the defendants.

On the basis of pleadings of the parties, the learned trial court framed seven issues in Civil Suit No.72/1996 relating to compensation in respect of death of Rukmani and seven issues in Civil Suit No.73/1996

relating to compensation in respect of death of Hazari. All the issues are reproduced in Para No.3 of the impugned judgment. Both the suits arose out of the same occurrence, therefore, the same were consolidated and common pleadings were taken on behalf of both the parties. The plaintiff Ram Dev examined himself as PW-1 and Heera as PW-2. The defendants examined DW-1 R.C. Keshwani.

The learned trial court, after considering the submissions as well as evidence of both the parties, decided Issue No.1 in favour of the plaintiff and held that parents of the plaintiff died due to negligence on the part of the defendants. The Issue No.2 was relating to the amount of compensation and thereon, after considering the evidence of PW-1 Ram Devi PW-2 Heera, the trial court recorded a finding that the plaintiff is entitled to compensation of Rs.1,50,000/- for the death of his father Hazari and mother Rukmani, and, after deducting therefrom 1/3rd amount for their personal expenses, recorded a finding that a sum of Rs.1,00,000/- is payable to the plaintiff as compensation. A further amount of Rs.15,000/- was awarded to the plaintiff towards mental agony on account of death of his parents, therefore, while deciding Issue No.2 the trial court held the plaintiff entitled for compensation of Rs.1,15,000/-.

Issue No.4 was relating to cause of action arose to the plaintiff to file the present suits and the trial court, after considering the submissions of learned counsel for both the parties, decided the same in favour

of the plaintiff.

Ultimately, the trial court, vide impugned judgment and decree dated 12th October, 1998, passed a decree of Rs.1,15,000/- as compensation in favour of the plaintiff and against the defendants with interest at the rate of 12% per annum from 21st November, 1996 till the date of decree and at the rate of 6% per annum thereafter. The remaining suit of the plaintiff was dismissed. Being aggrieved with the same, the defendants have preferred two appeals being S.B. Civil First Appeal No.18/99 and 19/99 for setting-aside the impugned judgment and decree, and plaintiff Ram Devi has preferred the appeal being S.B. Civil First Appeal No.157/2002 for enhancement of amount of the compensation in the Civil Suit No.72/96 in respect of death of his mother. However, in the prayer clause of the appeal, the plaintiff has prayed for enhancement of compensation in respect of death of deceased Hazari.

During pendency of the appeal, the cause title was amended and the Rajasthan State Electricity Board was substituted by Ajmer Vidhyut Vitran Nigam Limited, and a copy of the amended cause title of memo of appeal was sent to the defendants with notice of the appeal, wherein at page No.4 of the memo of appeal a prayer was made for enhancement of compensation in the matter relating to deceased Rukmani. However, no amendment has been made in the original memo of appeal by changing name of civil suit or in the main prayer of the memo of appeal.

The learned counsel for the defendants mainly challenged the finding of the trial court only in respect of Issue No.4 relating to cause of action arose to the plaintiff to file the present suits. It is contended on behalf of the defendants that the incident took place at Vijaynagar of Ajmer District and the suit ought to have been instituted in the court concerned of Ajmer District, whereas the present suits were instituted in the Court of Jaipur City, which were not proper and the learned trial court, only on the ground that Head Office of the defendants is situated at Jaipur, held the suits triable at Jaipur also.

I have considered the submissions of learned counsel for the defendants as well as the finding of the trial court in respect of Issue No.4.

The trial court has considered the submissions in this regard and has recorded a finding that the Head Office of the defendants is situated at Jaipur and the entire directions for supply of electricity are issued from Jaipur itself, therefore, it cannot be said that the court situated at Jaipur has no jurisdiction. It appears that the plaintiff impleaded (1) the Rajasthan State Electricity Board Jaipur through Chairman and (2) the Chief Engineer, Rajasthan State Electricity Board, Jaipur, as defendants in the present suits, therefore, I find that the defendants No.1 and 2 were residing at Jaipur and, in these circumstances, I find that the finding of the trial court in respect of Issue No.4 is correct.

Apart from above, I further find that the incident took place on 15th June, 1996 and the decree was passed by the trial court on 12th October, 1998, and in case the finding of the trial court on Issue No.4 is reversed and the matter is sent back from Jaipur to Ajmer then it will unnecessarily delay the proceedings particularly when the present matter pertains to compensation in respect of death of parents of the plaintiff on account of electric current flowing in electric pole stay-wire. In these circumstances, I am not inclined to accept the submissions of learned counsel for the defendants and upheld the finding of the learned trial court on Issue No.4.

So far as the appeal filed by the plaintiff is concerned, it is relevant to mention that the appeals were shown for hearing in weekly cause-list and being taken up day to day basis, but neither the plaintiff nor his counsel remained present for last three days and, in these circumstances, I could not get any assistance of the plaintiff in this regard.

However, I have examined the finding of the trial court on Issue No.2 regarding amount of compensation in respect of death of Hazari and Rukmani. The trial court has considered the statements of PW-1 Ram Dev and PW-2 Heera in respect of age and income of deceased persons and thereafter recorded a finding that Hazari was aged about 60 years and Smt. Rukmani was aged about 55 years at the time of incident. As per the contents of the plaint, deceased Hazari was earning Rs.3,000/- per month, whereas Rukmani was earning Rs.2,000/- per month.

The plaintiff, in his statement, stated that both were earning Rs.150/- per day. PW-2 Heera also stated that Hazari and Rukmani, both, were earning Rs.100/- to Rs.150/- per day. No documentary evidence has been produced on the record to prove the income of deceased Hazari and Rukmani. The trial court also observed that Hazari and Rukmani both were about 60 and 55 years of age respectively, and were old persons and recorded a finding that, looking to all the facts and circumstances, both of them were earning Rs.2500/- per month and, looking to their age, applied the multiplier of 5 and determined the compensation of Rs.1,50,000/- (255x12x5). The trial court deducted therefrom 1/3rd amount on account of personal expenses of the deceased persons; it further awarded Rs.15,000/- towards mental agony suffered by the plaintiff on account of death of his parents and thus the trial court awarded total compensation of Rs.1,15,000/- to the plaintiff.

I have also examined the statements of PW-1 Ram Dev and PW-2 Heera. There is no dispute that no documentary evidence in respect of income of the deceased persons has been placed on the record. Both the deceased persons were elderly grown. The trial court rightly considered the income of the deceased persons as Rs.2,500/- per month and looking to their age rightly applied the multiplier of 5. The amount of Rs.15,000/- has further been awarded on account of mental agony. In these circumstances, I find that the finding of the trial court in respect of Issue No.2 is also just and proper based on evidence and therein no interference is called for by this Court, and I do not find this case to

be a fit one to enhance the amount of compensation.

In view of the above discussion and reasons, I do not find any merit in any of the appeals and all the three appeals are accordingly dismissed, but with no order as to costs.

(N.K. Jain) J.

//Jaiman//